

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

.....

IN THE MATTER OF

**M.A. No. 78 of 2013 in R.A. No. 29 of 2012
in Application No.38 of 2012**

**Pradip Kumar Agarwalla
Proprietor of M/s Assam Brick Craft**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 79 of 2013 in R.A. No. 23 of 2012
in Application No.38 of 2012**

**Bimal Bajaj
Proprietor of M/s Bajaj Brick Industry**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 80 of 2013 In R.A. No. 18 of 2012
in Application No.38 of 2012**

**Shri Hukmi Chand Gupta
Prop. of M/s Sonam Brick Field**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 81 of 2013 In R.A. No. 24 of 2012
in Application No.38 of 2012**

**Prasanna Kumar Agarwalla
Proprietor of M/s Shyam Brick Industry**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 82 of 2013 In R.A. No. 30 of 2012
in Application No.38 of 2012**

**Gobind Kumar Choudhary
Proprietor of M/s Nayan Brick Industry**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 83 of 2013 In R.A. No. 25 of 2012
in Application No.38 of 2012**

**Nirmalenbu
Proprietor of M/s Nirmal Brick Field**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 84 of 2013 in R.A. No. 15 of 2012
in Application No.38 of 2012**

**Sushil Kumar Agarwalla
Proprietor of M/s Dipak Brick Field**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 85 of 2013 In R.A. No. 13 of 2012
in Application No.38 of 2012**

**Dinu Prasad Sahu
Proprietor of M/s D.K. Brick Industry (Unit 1)**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 86 of 2013 In R.A. No. 14 of 2012
in Application No.38 of 2012**

**Sunil Kumar Gupta
Proprietor of M/s Mahabir Brick Field**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 87 of 2013 In R.A. No. 26 of 2012
in Application No.38 of 2012**

**Punit Choudhary
Proprietor of M/s Om Brick Field**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 88 of 2013 In R.A. No. 17 of 2012
in Application No.38 of 2012**

**Gobin Jallan
Proprietor of M/s Mayur Brick Industry**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 89 of 2013 In R.A. No. 16 of 2012
in Application No.38 of 2012**

**Suren Kumar Agarwalla
Proprietor of M/s Mahabir Brick Field**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 90 of 2013 In R.A. No. 18 of 2012
in Application No.38 of 2012**

**Hukmi Chand Gupta
Proprietor of M/s Sonam Brick Field**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 91 of 2013 In R.A. No. 28 of 2012
in Application No.38 of 2012**

**Robin Kachari
Proprietor of M/s Dipti Brick Field**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 92 of 2013 In R.A. No. 27 of 2012
in Application No.38 of 2012**

**Prahlad Kumar Nimodia
Proprietor of M/s Mahan Brick Field**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 93 of 2013 In R.A. No. 22 of 2012
in Application No.38 of 2012**

**Ajay Kumar Choudhary
Proprietor of M/s Numaligarh Brick Field**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 94 of 2013 In R.A. No. 20 of 2012
in Application No.38 of 2012**

**Dinu Prasad Sahu
Proprietor of M/s D.K. Brick Industry (Unit 2)**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 95 of 2013 In R.A. No. 21 of 2012
in Application No.38 of 2012**

**Monymoy Bora
Proprietor of M/s M.M. Brick Field**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

And

**M.A. No. 96 of 2013 In R.A. No. 19 of 2012
in Application No.38 of 2012**

**Pawan Kumar Agarwalla
Proprietor of M/s Shree Mahadeo Brick Field**

.....Applicant

Versus

Rohit Choudhary & Ors.

.....Respondents

CORAM :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Dr.G.K. Pandey (Expert Member)

Hon'ble Dr. R.C.Trivedi (Expert Member)

Counsel for Appellants :

Mr. Sushil Kabra, Advocate

Counsel for Respondents :

Ms. Neelam Rathore, Mr. Vikramjeet and Ms. Syed Amber, Advocates.

Mr. Rahul Choudhary, and Ms. Vartika Sahay Walia, Advocates, for M/s Corporate Law Group for State of Assam

J U D G M E N T

Dated : May 09, 2013

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

By this order we shall dispose of the above 18 miscellaneous applications filed on behalf of the different applicants seeking correction/modification of the order and judgment passed by the Tribunal dated 24th January, 2013 in Review Application No. 29 of 2012 titled *Pradip Kumar Agarwalla v. Rohit Choudhary and Ors.*

2. One Mr. Rohit Chaudhary had filed an application (38 of 2011) stating that he was a resident of Village Ghokaghat and was concerned about the ecology of the area and the future of the Indian

Rhinoceros, Elephant and wide species of flora and fauna available in the Kaziranga National Park, which is also a tiger reserve under the provisions of The Wildlife (Protection) Act, 1972. The said applicant filed an application under Section 14(1) of the National Green Tribunal Act, 2010 (for short 'the NGT Act') praying for issuance of appropriate directions to the authorities to safeguard Kaziranga and its ecology. The main grievance of the applicant was that no regulated quarrying and mining activity was permitted in and around the area of Kaziranga National Park and even commercial activities were going on within the no development zone. This was threatening the survival of the rare species. The attempts of the applicants to remedy such wrongs at the ministerial and government levels failed to yield any result.

3. According to the applicant, there was rampant violation of the provisions of the Environment (Protection) Act, 1986, while directions issued in terms of Rule 5 of the Environment (Protection) Rules, 1986 were being acted upon more in its breach than in its compliance. After pleadings of the parties were completed, the arguments were heard by the Tribunal and vide its detailed judgment dated 7th September, 2012, the Tribunal passed the following judgment:

“32. After meticulous perusal of documents filed and the submissions made by Learned Counsel for parties, there is no hesitation in our mind to come to a conclusion that number of industrial units, some of which are hazardous and creating pollution, are existing in or about “No

Development Zone”. Protection of environment, ecology, biodiversity and adverse impacts on flora and fauna vis-a-vis conservation of forest and other natural resources including enforcement of legal rights relating to environment, being the paramount objective of the National Green Tribunal, to maintain healthy environment and eradicate the pollution, and to protect ecology in Kaziranga National Park and in its vicinity, which is highly eco-sensitive.

We feel certain directions are necessary to be issued for protection and preservation of environment.

33. Therefore, we direct the Authorities to take following actions :

(a). The 11 (eleven) stone crushers which according to the CPCB report, are located within the NDZ are non-functional at present. Since, those 11(eleven) stone crushers have been established / allowed to be established within NDZ in contravention of the 1996 Notification, the State Government is directed to take immediate steps to remove all those illegal stone crushers except 1(one) M/s Assam Stone Crusher from the NDZ area forthwith. It appears M/s. Assam Stone Crusher was installed before 1996 i.e. prior to the notification. But then, operation of the said 33 stone crusher unit would cause significant air pollution apart from noise pollution, and would lead to adverse impact on the ecosystem. The State of Assam is, therefore, directed to take steps to relocate the said unit outside the NDZ. In other words, the said unit should not be allowed to operate in its present location with immediate effect.

(b). The Government shall take appropriate steps not to allow operation of the 23 (twenty three) stone crusher units existing in the vicinity of NDZ (outside the NDZ) till necessary pollution control equipments and other measures are installed to eradicate the pollution, to the satisfaction of Assam Pollution Control Board and Central Pollution Control Board.

(c) According to the CPCB report 34 (thirty four) Brick Kilns are operating within NDZ, out of which only 1 (one) unit was set up before 1996. Brick Kilns being the main pollution causing units are hazardous to environment. The said 33 (thirty three) Brick Kilns should be closed down immediately.

So far as 1 (one) Brick Kiln which was established before 1996, is concerned, steps should be taken to either relocate it outside the demarcated zone or steps should also be taken to insist stricter air pollution control devices. The unit should be inspected by the SPCB, Assam regularly and CPCB occasionally so as to ensure that the pollution level of the unit is within control. No extension shall be granted to the said unit after expiry of its lease or permission at its present location.

(d). The CPCB report further reveals that 11(eleven) miscellaneous industries are existing within NDZ. Out of them 4 (four) are fuel dispensing stations (petrol pumps), 1(one) is a saw mill, 1 (one) oil tanker making unit

(steel fabrication), 1(one) is a restaurant (under construction), 1(one) concrete making unit, 2 (two) mustered oil mills and 1(one) flour mill.

Out of the aforesaid 11 (eleven) industries, except 4 (four) petrol pumps and the restaurant all other units generate lots of pollution, therefore, they should not be allowed to operate in their present locations and action should be taken to shift them immediately out of NDZ.

(e). The CPCB report further reveals that there are 25 (twenty five) Tea Factories out of which 22 (twenty two) are located within the NDZ and 3 (three) are within 500 m of outer periphery of NDZ. It appears the CPCB could visit only 13 (thirteen) Tea Leaf Processing Factories, due to flood, situation in Assam. The report reveals that only 1(one) unit has made arrangements to treat its effluent. The rest 22 (twenty two) tea processing units located within NDZ have installed boilers for which, coal, oil, wood is the main feed stock. They have also not installed any pollution control devices.

The SPCB and other Authorities are directed to ensure that no tea processing units having boiler using fossil fuel operates within the NDZ and take immediate steps to stop their operation.

The 3 (three) tea leaf processing units located within 500 m of the outer periphery of NDZ should be allowed to operate only if necessary pollution control measures as may be stipulated by SPCB, Assam are adhered to by those units.

Further, all the tea processing units must provide acoustical enclosures in their electrical generators for providing alternative electricity.

These are only some remedial measures, it is open to MoEF, CPCB and SPCB to adopt any other appropriate measure and take any other steps permissible under law to remove all the industrial units from NDZ and prescribe stringent standards to eradicate pollution so far as industrial units situated outside NDZ but in its close proximity, say within 500 meters.

34. The MoEF and the State Government are directed to prepare a Comprehensive Action Plan and Monitoring Mechanism for implementation of the conditions stipulated in the 1996 Notification specifying "No Development Zone" and for inspection, verification and monitoring of the prohibitions imposed in the notification referred to above, as well as the provisions of Rule-5 of the Environment (Protection) Act, 1986.

35. After giving the matter a conscious thought and after taking into account all the factors, we are of the opinion that MoEF and the State Government of Assam have totally failed in their duties with respect to implementation of the provisions of the 1996 Notification and due to the callous and indifferent attitude exhibited by the Authorities, number of polluting industries / units were established in and around the No Development Zone of Kaziranga thereby posing immense threat to the biodiversity, eco-sensitive zone, ecology as well as environment. We are, further, satisfied that this is a clear case of infringement of law. We, therefore, have no hesitation to direct the MoEF and the Government of Assam to deposit Rs. 1,00,000/- (Rupees one lakh only) each, with the Director, Kaziranga National Park for conservation and restoration of flora and fauna as well as biodiversity, eco-sensitive zone, ecology and environment of the vicinity of Kaziranga National Park in general and within the No Development Zone in particular. The said amount shall be utilised exclusively by the Director, Kaziranga

National Park for conservation, protection and restoration as well as for afforestation of suitable trees of the local species in and around the No Development Zone.

36. Before parting, we feel it necessary to express our appreciation to Shri Ritwick Dutta, Learned Counsel for the Applicant for the endeavourance made and pain taken by him to place different records and datas before this Tribunal to substantiate rampant violation of the Environment (Protection) Rules, 1986 at Kaziranga National Park as well as inside the No Development Zone. We also appreciate the fair submissions made by Ms. Neelam Rathore, Learned Counsel appearing for MoEF, who has ably assisted us by filing replies enclosing the report of CPCB which gave an impression with regard to the gravity of the threat being posed to the environment, ecology, eco-sensitive zone, biodiversity due to establishment of number of industrial units causing pollution.”

4. As is evident, after the pronouncement of the above judgment, Sushil Kumar Agarwalla, proprietor of M/s. Dipak Brick Field filed Review Application along with a number of other applicants being Review Application 15 of 2012.

5. We may notice that the review applications had not been filed only by the persons who were carrying on the brick kiln business but even by persons carrying on the businesses of stone crushers, saw mills, oil mills, flour mills and even other businesses. All the 18 applications with which we are concerned presently have been filed by the persons carrying on the business of brick kiln and all their review applications came to be dismissed, though by separate yet somewhat similarly worded orders dated 24th January, 2013.

6. After dismissal of the review applications, the applicants Pradip Kumar Agarwalla and Sushil Kumar Agarwalla filed applications under Sections 151 and 152 of the Code of Civil Procedure seeking the correction and modification of the order dated 24th January, 2013 passed in their respective review applications. These applications have come to be listed as M.A. Nos. 78 and M.A. No. 84 of 2013 respectively. All other applications have been filed by 16 other similarly situated persons on identical grounds and on same facts. We may notice that all these applications, including that of applicants in M.A. No. 78 and 84 raise common issues of fact and law. Thus, we have decided to deal with all these 18 applications by this common order.

7. It is not necessary for us to notice in any great detail the facts giving rise to the present application in each case. Suffices it to notice that common grounds and contentions have been raised by all the applicants for seeking correction/modification.

8. It is the contention of the applicants that the corrections and modifications sought by them in the order dated 24th January, 2013 are bound to materially affect the outcome of the judgment dated 24th January, 2013. The prayer for corrections/modifications is based upon factual and other errors that have crept in the judgment dated 24th January, 2013. Thus their prayer needs to be allowed.

9. In the application for corrections/modifications, the applicants have emphasized upon the following errors that exist in the order dated 24th January, 2013:-

(a)The applicants are carrying on the business of brick kiln, however, it has been incorrectly noticed in paragraph 4 of the order that the applicants are running a 'flour mill'. Thus, it is an apparent error.

(b)In paragraph 7, it is stated "further according to Mr. Singh, the applicant-unit is a green category". This statement is factually incorrect.

(c)In paragraph 8 of the order, it is noticed that in the notification dated, 5th July, 1996, the MoEF created 'no development zone' along Kaziranga National Park. This statement again is not correct inasmuch as the 'no development zone' has been created around Numaligarh Refinery site by the said notification.

(d)Lastly, in paragraph 12 of the judgment, a factual error has again been committed by noticing that the brick kiln of the applicants were situated beyond 'no development zone' while they are located within the 'no development zone'

10. A preliminary objection has been raised before the Tribunal on behalf of the non-applicants, that the present applications are, in fact, review applications in the garb of applications for corrections/modifications under Section 151 of the Code of Civil Procedure. The applications for review are not maintainable and

are beyond the scope of Order 47, Rule 1 of the Code of Civil Procedure.

11. Having heard the learned counsel appearing for the parties, we are of the considered view that the present applications, in substance, are not applications for correction of a typographical or an arithmetical error appearing in the judgment. The provisions of Section 152 of the Code of Civil Procedure can be pressed into service when a judgment, decree or order of the court has only clerical or arithmetical mistakes arising as a result of any accidental slip or omission and only then such errors could be corrected by the court. The basic principle for determination of such controversy stands squarely answered by the Supreme Court in the case of *Lily Thomas V. Union of India*, JT 2000(5) SC 617. The Court stated the dictum that the power of review can be exercised for correction of a mistake and not to substitute a view. Such power has to be exercised within the limits of the statute. As contemplated under Order 47 Rule 1 of CPC, there is a clear distinction in law in the case of an application filed under Section 152 read with Section 151 of the CPC for correction of a mistake or error. In the present case, it is the contention of the applicant that the judgment of the Tribunal dated 24th January, 2013 passed while dismissing the review applications, requires modification. Thus, the prayer is not simpliciter for correction of judgment but also for the review of the same.

12. An application for review, that has been dismissed once before, should be filed rarely and with great caution. The practice to file

clarificatory application, after dismissal of the review petition, has been deprecated by the courts from time to time. The Supreme Court, while emphasising the need for adherence to the salutary rule of not filing such frivolous applications stated that – it is only an exception – should be brought into aid rarely as otherwise it is bound to damage the fabric of the faith in judiciary. The Court, in the case of *Tamil Nadu Electricity Board & Anr. Vs. N. Raju Reddiar & Anr.* , JT 1997 (1) SC 486, held as under:

“Once the petition for review is dismissed, no application for clarification should be filed, much less with the change of the advocate-on-record. This practice of changing the advocates and filing repeated petitions should be deprecated with heavy hand for purity of administration of law and salutary and healthy practice.”

13. In the light of the above discussion, if we examine the facts of the present case, the main application has been disposed of with certain directions and orders that were passed against the present applicants. The applicants who filed review applications are seeking review of the main judgment dated 7th September, 2012, which came to be dismissed vide order dated 24th January, 2013. Still again, the applicants ventured into filing the present applications without any cogent reasons, and to say the least, on some flimsy and untenable grounds. In fact, their prayer in the application is for review of the judgment and order of the Tribunal dated 24th January, 2013 in the garb of an application for correction and modification. In our considered view, the present application is

nothing but an abuse of the process of law. It deserves to be dismissed on that ground alone. However, despite the above view, we will proceed to discuss the merits of these applications.

14. Now we would revert to the discussion on the alleged incorrect facts noticed in the order dated 24th January, 2013. Firstly, it is submitted on behalf of the applicants that in paragraph 4 of the order dated 24th January, 2013, the applicants have been described to be carrying on the business of flour mill and not that of brick kilns. It is true that in paragraph 4 it is so stated. However, it is nothing but a typographical omission/mistake. It is nowhere indicated that the Tribunal has not applied its mind to the case of the applicants all of who are stated to be brick kiln owners. We may notice that in the very opening of the judgment, the Bench has noticed that the applicants are running their respective brick kiln industries or are brick kiln owners. Furthermore, in the judgment at various places, it has been noticed that the applicants are carrying on the business of brick kilns, which is a polluting industry. Even in paragraph 12, the contention of the counsel that brick kiln was the business of the applicants, has been specifically noticed. Thus, we see that no prejudice has been caused to the applicants as a result of this mistake. However, we direct that the word 'flour mill' appearing in paragraph 4 of the order dated 24th January, 2013 shall be read as 'brick kiln'. It is indisputable before us that the applicants are not industries or units which fall in 'green category'. In fact, it is not even the case of the applicants themselves. Merely stating so in paragraph 7, may be an

unintended statement, but again it has not caused any prejudice to the applicants. We, direct this line to be deleted. However, no reasoning of the order dated 24th January, 2013 or even of the main judgment dated 7th September, 2012 gets affected or calls for variation for the reason that the applicant is an industry which does not fall in the 'green category'.

15. The notification dated 5th July, 1996 relates to creation of a 'no development zone'. The 'no development zone' has been specified in the appendix to the notification. The appendix to the notification gives the longitude and latitude of the 'no development zone' and is stated to be around and near to the Kaziranga National Park and is also around Numaligarh Refinery site. It is a fact which is inconsequential in all respects, primarily for the reason that the applicants have themselves stated that they are located within the 'no development zone'. The dimension or specific site of 'no development zone' or any controversy in relation thereto loses its significance because of the admitted case of the applicant that they are located within the 'no development zone'. In fact, they are challenging the statement noticed in paragraph 12 of the order dated 24th January, 2013 that the brick kiln in question is situated beyond the 'no development zone'. According to the applicants, they are located within the 'no development zone'. In view of this admitted position, the omission or typographical mistake loses its significance and cannot be projected as the foundation for challenging the correctness of the order dated 24th January, 2013. Even if we correct the judgment and delete the sentence from the

order dated 24th January, 2013, still neither the reasoning nor the conclusion of the order dated 24th January, 2013 gets affected. We must notice that despite the above substitution or deletion, in our considered view, neither any prejudice has been caused to the applicants nor it affects the reasoning of the judgments on merits of the case.

16. It is useful for us to notice that the directions and orders contained in paragraph 33 to 35 of the judgment dated 7th September, 2012 are applicable to all the units/industries, which are carrying on their activities within the vicinity of the 'no development zone'. Certain units have been directed to be closed while others have been permitted to operate subject to their adherence to the prescribed parameters to the extent that even tea processing units having boilers, using fossil fuel do not operate within the 'no development zone'. All these restrictions have been placed in the interest of environment. They are intended to prevent immense threat to the bio-diversity, eco-sensitive zone, the ecology as well as the environment by these commercial and polluting industries. The records clearly reflect that during the course of hearing, it was brought to the notice of the Bench that issues relating to environmental protection require urgent attention of all concerned. There was a large extent of stone quarrying within the 'no development zone' and various industries were carrying on their business activities in violation of the prescribed standards for pollution and the activities were completely unregulated. Some of these units do not have consent of the Pollution Control Board

concerned. Some others had obtained the consent of the Board but they did not have renewal of the same. Resultantly, as on date, most of these units are operating without proper consent of the Pollution Control Board. They also are required to obtain clearance from the Central and the State Government in accordance with the law. It was also averred on behalf of some of the applicants that they have fixed requisite chimneys and even of greater height than is required i.e. they have chimneys that are 30 meters long whereas chimneys that are only 20 meters in length is prescribed under the prescribed standards. This is of no consideration at the present stage. Under the judgment, the applicants are within their right to apply for obtaining the consent of the Board. The Board shall consider each case on merits and then grant permission, if such activity of the unit is permissible under the law and more particularly, in terms of the judgment dated 7th September, 2012. Even with the present applications, none of the applicants have annexed the consent granted by the Pollution Control Board. Mere presence of such documents would not *ipso facto* entitle the applicants to carry on their industrial activity. It will still have to be examined by the authorities concerned whether the unit falls within or beyond the 'no development zone'. All these matters are required to be examined by the authorities concerned in the light of the judgment of the Tribunal.

17. Even after making the said corrections, as contended by the applicants, there is no reason for the Tribunal to take any view different than the one taken in the order dated 24th January, 2013

dismissing the review application against the main judgment dated 7th September, 2012.

18. In view of the above discussion, we see no reason to grant the prayer made by the applicants in these applications. All these applications are disposed of with the observations as aforesaid, while leaving the parties to bear their own costs.

**Justice Swatanter Kumar
Chairperson**

**Justice U.D. Salvi
Judicial Member**

**Dr. D.K. Agrawal
Expert Member**

**Dr. G.K. Pandey
Expert Member**

**Dr. R.C. Trivedi
Expert Member**

New Delhi
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